IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

**J U D G M E N T**

Prakash Chaturvedi & anr. Vs. State of Rajasthan & anr.

**D.B.CIVIL WRIT PETITION NO.3964/2005**
Under Article 226 of
the Constitution of India.

Date of Judgment: July 03, 2006

P R E S E N T

**HON'BLE MR.JUSTICE N.N.MATHUR**
**HON'BLE MR.JUSTICE GOPAL KRISHAN VYAS**

Mr.M.Mridul, Sr.Advocate, assisted by
Mr.P.S.Chundawat, for the petitioners.

Mr.B.P.Agrawal ) Advocate General
Mr.N.M.Lodha ) Additional Advocate General
Mr.Bharat Vyas ) Additional Advocate General with
Mr.Sandeep Pathak)
Mr.L.R.Mehta )
Mr.R.K.Purohit ) for respondents.
Mr.M.S.Singhvi, for the intervener.
Mr.V.K.Mathur, for Union of India.
Mr.Girish Joshi, for University Grants Commission.

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

**REPORTABLE**

1. Petitioners Prakash Chaturvedi and Bhopal Chand Mehta by way of instant writ petition under the label of "Public Interest Litigation" have challenged the validity

of Rajasthan Private Universities Act, 2005, hereinafter referred-to as "the Rajasthan Act". It is submitted that the Act of 2005 is liable to be quashed in view of the judgment of the Hon'ble Supreme court rendered in Professor Yashpal v. State of Chattisgarh reported in (2005) 5 SCC 420, which more or less fully applies to the instant case. It is averred that in Prof.Yashpal's case, Chhatisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Adhiniyam 2002, hereinafter referred-to as "the Chhatisgarh Act", has been struck down by the Hon'ble Supreme court. The Rajasthan Act, for all practical purposes except some changes, is substantially similar to the Chhatisgarh Act. Petitioners have also challenged the validity of the impugned Act of 2005 on the ground of non-competence of Rajasthan State Legislative Assembly. It is submitted that the State Legislature appears to have enacted the impugned Act of 2005 under the impression that the matter falls within the domain of Entry 25 of List III of Schedule 7 of the Constitution of India. According to the petitioners, the Entry 25 of List-III can be operative only after University has been established and has started functioning so as to enable the regulatory bodies to decide as to whether University is fit to act as

such and the status of State Universities can be given by the UGC in exercise of powers conferred upon it by Section 3 of the UGC Act.

2. On the other hand, it is submitted that the impugned Act has been enacted considering the apparent need to boost up higher education scenario in the State by introducing private parties especially through establishment of Self Financed Private Institutions. It is submitted that His Excellency the Governor of Rajasthan made & promulgated the Rajasthan Self financed Private Universities Ordinance, 2004 on 18.9.2004. The Apex Court delivered the judgment in Prof.Yashpal's case (supra) on 11.2.2005, whereby the Chattisgarh Act was struck down. The Rajasthan Self Financed Universities Bill was placed before the Rajasthan Legislative Assembly on 21.2.2005. On the basis of the resolution mooted by the Hon'ble Minister, the Incharge of the Higher Education, the Rajasthan Legislative Assembly directed the Select committee to examine the Bill keeping in view the decision of the Apex Court in Prof.Yashpal's case (supra). Accordingly, the changes were made keeping in view the lacunaes pointed out in Chattisgarh Act and

the observations made. Thus, the Select Committee recommended modifications in the Act to bring the Bill strictly in accordance with the law laid down by the Apex Court in Prof.Yashpal's case (supra). Learned counsel has pointed out various provisions under the impugned Act comparing with the Chattisgarh Act to show that the impugned Act does not suffer from the defects pointed out in the Chattisgarh Act.

**ISSUE INVOLVED – NEED TO REVITALIZE HIGHER EDUCATION**:

3. The issue involved in the instant petition is of contemporary significance, as it pertains to "Higher Education" which in recent times, has undergone enormous change. Since the formation of Universities around 1500 years ago, the higher education has seen many transformations. In antiquity, India remained the centre of education. The world famous Universities of Nalanda and Takshshila attracted the students across the Sea. The word **"Vishwa Vidyalaya"** itself expresses international character of the education. Exchange of knowledge whether through import or export, enhances the mental horizon and widens

perception of the scholars. The changed Scenario has compelled the Educationists, Economists, Legislators and the Judges to consider the potential for growth of trade in the educational services in our Country. It is of-course true that the Education in general has been considered as a noble profession as such its commercialisation can not be permitted. However, it cannot be denied that the traditional Universities mostly affiliated Universities are ill-equipped to meet the challenges in the contemporary world. Although the Governments continue to spend on primary and secondary education, they are becoming more and more critical about financing higher education. There have been private initiatives with purely profit motives by unscrupulous persons, which has led to commercialization of Higher Education as is evident from the gross misuse of the Chhatisgarh Act, wherein within a year, 112 Universities were established. But it would be a travesty, if we close our eyes to the new challenges and the revolutions, which have taken place in the world of Education in last two decades mainly because of advancement in technology and the growing relations between the education-knowledge-health-economy of a nation. It is now economy that is linked

with knowledge and Society that has foundation of knowledge. Education has, therefore, become a prime agenda for both developed and developing Nations. Thus, people and Nations are talking about trade in Education. This is what has forced Nations to talk about Education as a Service Industry and, therefore, inclusion of Education in W.T.O. regime under the "General Agreement on Trade Services" is already on cards. 2005 onwards GATS Rules permit Universities worldwide to set up centres anywhere in the World. Education has become marketable commodity which can be imported and exported. Indian Educational Institutions have been producing Engineers, Doctors, Management Executives holding key positions all over the World. **The concept of World brotherhood is not mere theory but a practice can only be ushered with adoption of a dynamic proposition of Export of Higher Education. This cannot be merely viewed either from purely commercial point or bureaucratic or copy book approach. Misuse of a provision of law by unscrupulous persons at a particular point of time in a particular region, should not withhold genuine efforts of private sector participation to promote trade in**

**Educational Service, which is imperative in the existing circumstances**.

**PROFESSOR YASHPAL'S CASE**:

4. Professor Yashpal's case is landmark judgment in the field of Higher Education rendered by the Apex Court. It has material bearing on the issue involved in the instant case. In the said case, Prof.Yashpal, an eminent Scientist and former Chairman, UGC, had challenged the constitutional validity of the Chhatisgarh Act. The said Act provided for the establishment of self-financed private universities for imparting higher education and to regulate their functions and for matters connected therewith or incidental thereto. By Section 5 of the Act, the State was empowered to incorporate and establish the University by issuing a notification in the Gazette and Section 6 permitted such universities to affiliate any college or other institution or set up more than one campus with the prior approval of the State Government.

5. In the said petition, it was averred that the State Government established Universities by issuing

notifications in an indiscriminate and mechanical manner without having the slightest regard to the availability of any infrastructure, teaching facility or their financial resources. In a short span of about one year as many as 112 universities were established and many of them had absolutely no buildings or campus and were running from one-room tenements. It was further averred that irrespective of the fact that the universities were wholly incapable of imparting any education much less a quality education in absence of basic infrastructure like classrooms, libraries, laboratories or campus, they were empowered to award degrees. The private universities started running professional courses without taking prior permission from the regulatory bodies such as All India Council of Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI) etc. It was apprehended that in absence of requisite permission from the statutory bodies, the degrees and certificates awarded by such universities would not be recognized, as a result thereof the students studying in such universities and obtaining the degrees would suffer immense loss, both in terms of money and also the time spent in completing the courses. It was argued that the

UGC Act has been made nugatory as private universities were offering courses without subscribing to the demands laid down by UGC and there being no homogeneity of the course content. It was also complained that the Universities have been established merely to confer degrees and they have their own created large number of degrees and diplomas, totally unheard-of.

6. In reply to the petition, the respondent State of Chhatisgarh took the stand that in view of Entry 32 List II of the Seventh Schedule to the Constitution, the State had the legislative competence to make an enactment regarding incorporation of a university. According to the State of Chhatisgarh, the Act was enacted to facilitate establishment of private universities with a view to create supplementary resources for assisting the State Government in providing quality higher education. It was averred that the notifications establishing the universities were issued on the basis of the representations made by the sponsoring bodies as set out in their project reports. Later on, it was found that functioning of the universities post-notification was dismal and completely

belied the expectations which the State Government had in that behalf, raising serious concern about the academic interests of the students seeking admission therein. This compelled the State Legislature for amendment of the Act during the pendency of the writ petition in the name of Chhatisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Sanshodhan Adhiniyam, 2004. After expiry of the time limit fixed in the said amending Act, 59 universities were de-notified on account of their failure to comply with the amended provisions.

7. The main feature of the amending Act, 2004 was to set up a **"Regulatory Commission"** for the purpose of ensuring appropriate standards of teaching, examinations, research, protection of the interests of the students and ensuring reasonable service conditions of employees by the university. The **Regulatory Commission** was to function under the general control of the Visitor. It consisted of two full time and not exceeding two part-time members to be appointed by the Visitor. It was made obligatory on the part of the Regulatory Commission to take, in consultation with the university and other bodies concerned with regulatory

functions of the higher education system in the Country such as UGC, AICTE, NCTE, MCI, Pharmacy Council and such agency/agencies established by the Central Government for regulation of education, such steps as it considers necessary for determination and maintenance of standards of teaching, examination and research in the university.

8. However, the Supreme Court was of the view that the amending Act, 2004 did not make any appreciable change in the matter of issuing a notification for establishment of a university. The Court found that even after setting up **Regulatory Commission**, the possibility of establishing a University by issuing a notification only on the basis of paper Report, could not be ruled out. It was noted that process provided to the effect that the **Regulatory Commission** on receipt of the project report, proof of creation of the endowment fund and possession of land or in lieu thereof proof of deposit of additional fund and on being satisfied with the proposal to establish University, may advise the State Government to issue a notification but it did not make any substantial change. Thus, in the opinion of the Apex Court, Sections 5 and 6 of the amended Act

suffered from the same vice as the un-amended provisions and, as such, were liable to be struck down being ultra vires. Dealing with the competence, the Court held that the State Legislature may make an enactment providing for incorporation of universities under Entry 32 of List II and also generally for universities under Entry 25 of List III. The Apex Court explained and interpreted the word "University" occurring in Entry 32 referring its meaning given in Halsbury's Laws of England and the New Encyclopaedia Britannica which means a whole body of teachers and scholars engaged at a particular place in giving and receiving instruction in the higher branches of learning and as such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges and forming an institution for promotion of education in higher or more important branches of learning and also the colleges, buildings and other property belonging to such body. The Court also referred to the other necessary attributes of a University as plurality of teachers teaching more than one higher faculties and other facilities for imparting instruction and research, provision for residence and certain standard of

instruction providing for graduate and postgraduate levels of study. **The Court emphasized that a University presupposes existence of a campus, classrooms, lecture theatres, libraries, laboratories, offices, besides some playgrounds and also sports facility for overall development of personality of the students. The Court further observed that though incorporation of a University is an State subject under Entry 32 of List II but as basically, a University is an institution for higher education and research, the area of higher education and research is covered by Entry 66 of List-I, which speaks of coordination and determination of standard in institutions for higher education or research and scientific and technical institutions.** Resolving the clash between the powers of the State and the Union, the Court held that **while incorporation of universities as a legislative head being in the State List, the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on, will not come within the purview of the State**

**Legislature on account of a specific entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent.** The Court emphasized that it is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained. The Court observed that in order to achieve the aforesaid purpose, the Parliament enacted the UGC Act. In view of Section 22 of the UGC Act, the right of conferring or granting degree can be exercised only by a university or an institution deemed to be university under Section 3 of the UGC Act or institution especially empowered by an Act of Parliament to confer or grant degrees. Dealing with the Chhatisgarh Act, the Court held that the enactment simply clothes a proposal submitted by a sponsoring body or the sponsoring body itself with the juristic personality of a university so as to take advantage of Section 22 of the UGC Act and thereby acquires the right of conferring or granting academic degrees but without having any infrastructure or

teaching facility for higher studies or facility for research is not contemplated by either of these entries. Thus, the Court found the Chhatisgarh Act a fraud on the Constitution and, as such, declared wholly ultra vires. The Court observed in para 49 as follows:

> "49. The whole scheme of the impugned Act, especially the effect of Sections 4, 5, 6 thereof and the result which it has led to in notifying as many as 112 universities within a short span of one year **on the basis of proposals made on paper with many or most of them having almost zero infrastructural facilities clearly shows that the relevant provisions of the Act have completely stultified the power of Parliament under Entry 66 to make provision for coordination** and determination of standards in institutions for higher education like universities, the provisions of the UGC Act and also the functioning of the University Grants Commission. Sections 5 and 6 of the impugned Act are, therefore, wholly ultra vires the Constitution and are liable to be struck down."

9. Dealing with the contention that the policy of the Government of India that the impugned enactment is an experiment in the changing world Scenario where the trend is towards globalization, the Court held that the impugned Act which enables only a proposal of a sponsoring body to be notified as a University, is not likely to attract private capital and a University so notified cannot provide education of any kind much less

of good quality to a large body of students. The Court observed as follows:

> "What is necessary is actual establishment of institutions having all the infrastructural facilities and qualified teachers to teach there. Only such colleges or institutions which impart quality education allure the best students. Until such institutions are established which provide a high level of teaching and other facilities like well-equipped libraries and laboratories and a good academic atmosphere, good students would not be attracted. In the current scenario, students are prepared to go to any corner of the country for getting good education. What is necessary is a large number of good colleges and institutions and not universities without any teaching facility but having the authority to confer degrees. If good institutions are established for providing higher education, they can be conferred the status of a deemed university by the Central Government in accordance with Section 3 of the UGC Act or they can be affiliated to the already existing universities. The impugned Act has neither achieved nor is capable of achieving the object sought to be projected by the learned counsel as it enables a proposal alone being notified as a university."

10. In view of the findings recorded, the Apex Court declared the provisions of Sections 5 and 6 of the Act ultravires and quashed the gazette notifications notifying the establishment of universities under the said Act.

**CHALLENGE TO THE RAJASTHAN ACT, 2005**:

11. Reverting to the case in hand, the principal contention of Mr.M.Mridul, Senior Advocate, appearing for the petitioners is that in view of the judgment of the Supreme Court in Prof.Yashpal's case whereby the Chhatisgarh Act has been struck down, the Rajasthan Act of 2005 being substantially the same, except some changes here and there, is also liable to be struck down. It is submitted that under the impugned Act, a University is to be established only on the basis of the project report without having any infrastructure or without fulfilment of norms and standards as laid down by the statutory bodies like UGC, AICTE etc. Learned counsel has also raised contention with respect to competence of the State Legislature of enactment of the impugned Act under Entry 25 of List III. On the other hand, it is submitted by Mr.B.P.Agrawal, learned Advocate General, that there is a sea difference in between the Chhatisgarh Act and the impugned Rajasthan Act of 2005. To substantiate the contention, he has referred-to relevant provisions comparing both the Acts. It is submitted that the impugned Act has provided a mechanism to ensure that before notification

of establishment of a University is issued, the substantial infrastructure as required for establishing a University physically comes into existence. Learned counsel has also cited a decision of the Apex Court in State Bihar v. Bihar Distillery Ltd. reported in AIR 1997 SC 1511 for the proposition that the Court should try to sustain validity of the Act to the extent possible. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed.

12. Mr.M.S.Singhvi, learned counsel appearing for the intervener, has emphasized the need of establishing private Universities in the Country. He has relied on a decision of the Apex Court in T.M.A.Pai Foundation v. State of Karnataka reported in (2002) 8 SCC 481. While dealing with the decision of Prof.Yashpal's case (supra), it is submitted by Mr.Singhvi that the judgment has to be read in right perspective. He has also cited the decision of the Apex Court in State of Karnataka v. C.Lalitha reported in (2006) 2 SCC 747 for the proposition that a judgment is not be read as a statute but it must be construed as if it had been rendered in accordance with law.

**COMPARING CHHATISGARH (AMENDMENT) ACT 2004 AND RAJASTHAN ACT 2005**:

13. The controversy involved in the instant case is as to whether the impugned Rajasthan Act is substantially similar to the Chhatisgarh Act which has been declared ultra vires by the Apex Court in Yashpal's case (supra). It is significant to notice that the objects and reasons of the impugned Act itself speak that the Act has been framed taking into consideration several judgments of the Supreme court including the judgment dated 11.2.2005 in Prof.Yashpal's case (supra). It would be convenient to extract **the objects & reasons as well as the comparative Chart of the relevant provisions of Chhatisgarh Act, 2002 as amended upto 17.3.2004 and the Rajasthan Act, 2005**:

**"Objects & Reasons**

> Culture and heritage is directly linked to the fundamental values of life provided by education, India an epitome in the field of education is able to meet the challenges of paradigm shift in the pluralistic society only by abiding with the principle of `unity in diversity'. The Constitution of India particularly Article 29, 45, 46, several judgments of the Supreme Court including the judgment dated February 11, 2005 in Prof.Yashpal & Anr. Vs. State of Chhatisgarh & Ors. and the National Policy on education updated in 1992 has

enjoined on the States the duty to provide quality education.

UGC by its 2003 Regulation has provided for creating a regulatory mechanism laying down the conditions for the establishment and operation of private universities and for safeguarding the interests of the student community with adequate emphasis on the quality education and to avoid commercialization of higher education etc. These institutions must maintain the academic character in their work and be the makers of future leaders of thought and action in the country.

The Bill seeks to make Rajasthan as a hub of maintaining highest standards of teaching and conducting examination of international standards and provide the necessary legal frame work for institution having sufficient background, expertise and resources in the field of education where under education imparted is universal, embracing many branches and there is proficiency in the branches taught. The Universities so established must serve the twin purpose of educating its members and advancing the frontiers of education and also provide the highest level of social and intellectual life to its members.**"**

| **The Chhatisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Sanshodhan Adhiniyam 2004:** | **The Rajasthan Private Universities Act, 2005**: |
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| **PREAMBLE:**<br>Establishment of Self Financed Private Universities. | For establishment and incorporation of Private Universities. |
| Sec.2:Definition Clause:<br>(a) "Ordinance" means an Ordinance of the University; | 2(v): "Statutes", "Ordinances" and "Regulations" mean respectively, the Statutes, Ordinances and Regulations of the University made under this Act; |

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| (b) “Sponsoring Body” in relation to a University means - | 2(u). “sponsoring body” in relation to a university established under this Act means - |
| (i) a Society registered under the Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 (No.44 of 1973) | (i) a Society registered under the Rajasthan Societies Registration Act, 1958 (Rajasthan Act No.28 of 1958) or the Societies Registration Act, 1860 (Central Act No.21 of 1860); or |
| (ii) any Public Trust; or | (ii) any Public Trust registered under the Rajasthan Public Trusts Act, 1959 (Act No.42 of 1959) or the Indian Trusts Act, 1882 (Central Act No.2 of 1882 or under the relevant laws in any other State or Union territory; or |
| (iii) a Company registered under Section 25 of the Companies Act, 1956 (No.1 of 1956); | (iii) a Company registered under Section 25 of the Companies Act, 1956 (Central Act No.1 of 1956); |
| (c)“Statute means a Statute of the University; | (za) “University” means a university established and incorporated under sub-section (1) of Section 6 |
| (d) “University” means a University established under sub-section (1) of Section 5. | |
| (e) “main campus” means the campus of the university where main office of the university is situated and where the Vice Chancellor and Registrar reside and where not less than three University Teaching departments/ Schools of studies are located. | |
| (f) “Off-campus Centre” means a centre of the university established by it outside the main campus (within or outside the State) operated and maintained as its constituent facilities, faculty and staff. | (o) “Off-campus Centre” means a centre of the University established by it outside the main campus operated and maintained as its constituent unit, having the University's complement of facilities, faculty and staff; |
| (g) “Off-shore campus” means a campus of the university established by it outside the country, operated and maintained as its constituent unit, having the university's complement of facilities, faculty and staff. | (x) “study centre” means a centre established and maintained or recognized by the university for the purpose of advising, counselling or for |

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| (h) "study centre" means a centre established and maintained or recognized by the University for the purpose of advising, counselling or for rendering any other assistance required by the students in the context of distance education.<br><br>(i) "Fee" means collection made by the university from the students by whatever name it may be called, which is not refundable.<br><br>(j) **"Regulatory Commission" means the Regulatory Commission established under the Adhiniyam**. | rendering any other assistance required by the students in the context of distance education.<br><br>(g) "Fee" means collection made by the university from the students by whatever name it may be called, which is not refundable.<br><br>(r) **"Regulating Body" means a body established by the Central Government for laying down norms and conditions for ensuring academic standards of higher education, such as UGC, AICTE, NCTE, MCI, PCI, NAAC, ICAR, DEC, CSIR etc. and includes the State Government;**<br><br>(a)"AICTE" means All India Council of Technical Education established under All India Council of Technical Education Act, 1987(Central Act No.52 of 1987);<br><br>(b) "CSIR" means the Council of Scientific and Industrial Research, New Delhi- a funding agency of the Central Government;<br><br>(c)"DEC" means the Distance Education Council established under Section 28 of the Indira Gandhi National Open University Act, 1985 (Central Act No.50 of 1985);<br><br>(d) "distance Education" means education imported by combination of any two or more means of communication, viz. Broadcasting, telecasting, correspondence courses, seminars, contact programmes and any other such methodology;<br><br>(e)"DST" means department of Science and Technology of the Central Government;<br><br>(f)"employee" means a person appointed by the university to work in the university, colleges, institutions or study centres and includes teachers, officers (other than the Visitor) and other employees of the university;<br><br>(h) "Government" means the State |

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| | Government of Rajasthan;<br>(i) "higher education" means study of a curriculum or course for the pursuit of knowledge beyond 10+2 level;<br>(j) "hostel" means a place of residence for the students of university, or of its colleges, institutions or centres maintained or recognized to be as such by the university;<br>(k) "ICAR" means the Indian Council of Agriculture Research, a society registered under the Societies Registration Act, 1860 (Central Act No.21 of 1860);<br>(l) "MCI" means Medical Council of India, Delhi;<br>(m) "NAAC" means the National Council of Assessment and Accreditation, Bangalore, an autonomous institution of the UGC;<br>(n)"NCTE" means the National Council of Teacher Education, Delhi;<br>(p) "PCI" means Pharmaceutical Council of India, Delhi.<br>(q) "prescribed" means prescribed by Rules made under this Act;<br>(s)"Rules" means the Rules made under this Act;<br>(t)"Schedule" means the schedule to this Act;<br>(w)"Student of the University" means a person enrolled in the University for taking a course of study for a degree, diploma or other academic distinction duly instituted by the university, including a research degree;<br>(y)"teacher" means a Professor, Reader, Lecturer or any other person required to impart education or to guide research or to render guidance in any other form to the students for pursuing a course of study of the University;<br>(z)"UGC" means the University Grants Commission, established under the University Grants Commission Act, |

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| | 1956 (Central Act No.3 of 1956); |
| Sec.3 The object of the University shall be- | Sec.3. The object of the university, -Following shall be the objects of the university- |
| 1.To provide instructions, teaching and training in Higher Education and make provisions for research, advancement and dissemination of knowledge; | (1) to provide instructions, teaching and training in higher education and make provisions for research advancement and dissemination of knowledge; |
| 2. to create higher levels of intellectual abilities; | (2) to create higher levels of intellectual abilities; |
| 3. to establish state of the art facilities for education and training; | (3) to establish state of the art facilities for education and training; |
| 4. to carry out teaching and research and offer continuing education programmes; | (4) to carry out teaching and research and offer continuing education programmes; |
| 5. to create centres of excellence for research and development and for sharing knowledge and its application; | (5) to create centres of excellence for research and development and for sharing knowledge and its application; |
| 6. to provide consultancy to the industry and public organizations; | (6) to establish campus in Rajasthan and to have study centres at different places within its jurisdiction; |
| 7. to establish main campus in Chhattisgarh and to have study centres at different places in India and other countries; | (7) to establish examination centres; |
| 8. to establish examination centres; | (8) to institute degrees, diplomas, certificates and other academic distinctions on the basis of examination, or any such other method; |
| 9. to institute, degrees, diplomas, certificates of examination, or any other method of evaluation; | (9) to ensure that the standards of degrees, diplomas, certificates and other academic distinctions are not lower than those laid down by AICTE, NCTE, UGC, MCI, Pharmacy Council, and other similar agency/agencies established by the Central Government for regulation of education; |
| 10. to ensure that the standard of degrees, diplomas, certificates and other academic distinctions are not lower than those laid down by AICTE, NCTE, UGC, MCI, Pharmacy Council, and such agency/agencies established by the Central Government for regulation of education and the Regulatory Commission; and; | (10) to open study centers within its jurisdiction; |

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| 11. to pursue any other objective as may be approved by the Regulatory Commission. | (11) to set up off campus centre within and out of the state, subject to the permission of the concerned State, any law made by the Parliament and any regulation, rules, etc. made by the regulating bodies;<br>(12) to pursue any other objective as may be approved by the State Government. |
| Sec.4: Proposal for establishment of the University | Sec.4: Submission of proposal for establishment of a University and its evaluation: |
| (1)(a) An application containing the Project Report to establish a university for carrying out any or all the objectives enumerated in Section 3 of the Adhiniyam **shall be made to the Regulatory Commission form as may be prescribed**, at least one year before the date from which it intends to start the university | (1) An application containing the proposal and the project report to established a university in private sector **shall be made by the sponsoring body to the State Government,** alongwith such fee as may be prescribed. |
| (b) The Sponsoring Body shall submit along with its application as per (a) above,<br>(i)Proof of having established an Endowment Fund of Rs.2 crore;<br>(ii)Proof of being in possession of 15 acres of land, in case the main campus is proposed to be established within the Municipal Corporation Limits of Raipur; | (2) The project report must contain the following particulars, namely:-<br>(a) the details of the sponsoring body alongwith the copies of its registration certificate, constitution and bye-laws;<br>(b) the information regarding financial resources of the sponsoring body alongwith audited accounts for the past five years; |
| or 25 acres of land in case the main campus is proposed to be established elsewhere in the State and in addition, if the land has been obtained on lease, the period of lease should be atleast 30 years. In case, the Sponsoring Body does not possess the required land, it shall furnish proof of having deposited an additional sum of Rs.2 crore in the manner prescribed. Withdrawals out of this additional fund shall be permitted by the Regulatory Commission for the purchase of land for the use of the University. | (c) the name, location and headquarters of the proposed university;<br>(d) the objectives of the University;<br>(e) **the availability of land and details of buildings** and infrastructure facilities, if already exist;<br>(f) availability of **academic facilities** including teaching and non-teaching staff, if any, at the disposal of sponsoring body;<br>(g) the details of **plans for campus development such as construction of buildings, development of structural amenities** and infrastructure facilities and procurement of equipment etc. **to** |
| Provided that where the main campus | |

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| of the university is proposed to be established in a Scheduled Area of the State, only fifty percent of the amounts in (i) and (ii) above need to be deposited. | **be undertaken before the university starts** functioning and phased programme for first five years;<br>(h) **the phased outlays of capital expenditure proposed for the five years and its sources of finance**; |
| (c) The Endowment Fund shall be used as security deposit to ensure that the University complies with the provisions of the Adhiniyam and functions as per the provisions of the Adhiniyam, the Statutes and the Act. The Regulatory Commission shall have the power to forfeit a part or whole of the Endowment fund, in case of non-compliance in the manner as may be prescribed. | (i) **the nature and the type of programmes of study and research proposed to be undertaken by the university and their relevance to the development goals** and employment needs of the State and phasing of such programmes over the first five years with coursewise enrolment targets;<br>(j) the experience and expertise in the concerned disciplines at the command of the sponsoring body; |
| (d) The Endowment Fund shall be invested in the manner as may be prescribed. | (k) the nature of facilities, courses of study and research proposed to be started;<br>(l) **the estimated recurring expenditure coursewise or activitywise, sources of finance and estimated expenditure per student;** |
| (e) The Sponsoring Body shall be permitted to use income from the Endowment Fund for the development of the University. | (m) the scheme for mobilizing resources and the cost of capital thereto and the manner of repayment to such sources; |
| (1-A) A University already established in the State under the provisions of the Adhiniyam shall comply with the provisions of clauses (b) to (e) of sub-section (1) of Section 4 above by 30th June, 2004 or else the Notification issued by the Government under sub-section 5 of the Adhiniyam shall be liable to be cancelled on the recommendations of the Regulatory Commission. In the event of such de-notification of the University, completion of courses, conduct of examinations, award of the degrees to the students of the university may be assigned to another University in such a manner that the interests of the students are not affected. Expenditure made in this behalf shall be made good from the General Fund of the University concerned. | (n) the scheme for the generation of funds internally through the recovery of fee from students, revenues anticipated from consultancy services and other activities relating to the objects of the university, and other anticipated income;<br>(o) the proposed fee structure with reference to the details of expenditure on unit cost and the extent of concessions or rebates in fee or free-ships and scholarships to the poor students for economically poor or socially backward families, including Scheduled Castes, Scheduled Tribes, other Backward Classes and handicapped students; |

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| (2). **The Project Report shall contain** the following particulars namely-<br>(a) the objects of the University alongwith the details of the Sponsoring Body;<br>(b) the extent and the status of the University and the availability of land;<br>(c) the nature and the type of programmes of study and research to be undertaken in the university during a period of not less than the next five years;<br>(d) the nature of faculties, courses of study and research proposed to be started;<br>(e) the campus development such as building, equipment and structural amenities;<br>(f) the phased outlays of capital expenditure for a period not less than the next five years;<br>(g) the itemwise recurring expenditure, sources of finance and estimated expenditure for each student;<br>(h) the scheme for mobilizing resources and the cost of capital thereto and the manner of repaying to the Sponsoring body and other sources;<br>(i) the scheme for the generation of funds internally through the recovery of fee from students, revenues anticipated from consultancy and other activities relating to the objects.<br>(j) the details of expenditure on unit cost, the extent of concessions or rebates in fee, free studentship and scholarship for students belonging to economically weaker sections and the fees structure indicating varying rate of fee, if any, that would be levied on non-resident Indians and students of other nationalities.<br>(k) the years of experience and | (p) the system proposed to be followed for selecting students for admission to the courses of study at the university;<br>(q) the system proposed to be followed for appointment of teachers and other employees in the university;<br>(r) whether the University is desirous of taking up distance education programme. If so, details of study centres proposed to be started.<br>(s) whether the university proposes to undertake some programme related to local needs. If so, the nature of specialized teaching, training or research activities to be undertaken by the university so as to fulfil this objective;<br>(t) whether the University proposes to start some programmes for the benefit of farmers, women and industries. If so, details thereof may be given.<br>(u) details of pay grounds and other facilities available for or proposed to be created for games and sports and extra curricular activities like National Cadet Corps, National Service Scheme, Scouts and Guides etc;<br>(v) the arrangements proposed to be made for academic auditing;<br>(w) **justification regarding the necessity of establishment of the proposed University;**<br>(x) **commitment to follow the norms of the regulating bodies;**<br>(y) such other details as the sponsoring body may like to give;<br>(z) such other details as may be prescribed.<br>(3) The Government on receipt of the proposal and the Project Report for establishment of a university, **shall constitute a Committee consisting of such members as may be specified by** |

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| expertise in the concerned disciplines at the command of the sponsoring Body as well as the financial resources.<br><br>(l) the system to select students for admission to the courses of study at the University;<br><br>(m) such other details as may be prescribed by rules framed under this Adhiniyam.<br><br>(3) The Regulatory Commission on receipt of the application, Project Report, proof of creation of Endowment Fund and of possession of land to be used exclusively for running the University or in lieu thereof proof of deposit of additional fund as per the provisions of sub-section (1) above, shall make such enquiries as it may deem necessary within 45 days from the date of application.<br><br>**(4) If the Regulatory Commission is satisfied with the proposal to establish the university, it may advise the State Government to issue a Notification**. | **it,** out of whom atleast one shall be an expert to examine the proposal and the project report.<br><br>Explanation: In this sub-section, the expression "expert" means an academician of prominence in the respective field of higher education.<br><br>(4) The Committee shall consider the proposal and the project report on the following grounds namely -<br><br>(a) financial soundness and assets of the sponsoring body and its ability to set up the infrastructure of the proposed university;<br><br>(b) background of the sponsoring body that is to say its expertise and experience in the field of education, its general reputation etc. and its commitment to follow the norms of the regulating bodies;<br><br>(c) potentiality of the courses proposed to be offered that is to say the courses are able to develop the human resources as per the requirements of contemporary demands, the courses have new features and include emerging branches of learning;<br><br>(5) The Committee, while considering the proposal and the project report under sub-section (4), may call for such other information from the sponsoring body as it thinks proper for the purpose.<br><br>(6) The Committee shall submit its report to the State Government within a period of one month from the date of its constitution;<br><br>Provided that while computing the period of one month, the period commencing from the date on which requisition for any information under sub-section (5) is issued and ending on the date on which requisite information is submitted to the committee shall be excluded. |
| **Sec.5 Establishment of the** | **Sec.5: Issuance of the Letter of** |

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| **University:** | **intentand compliance report:** |
| (1)(a) **the State Government on receiptof the advice of the Regulatory Commission under sub-section (4) of Section 4 of the Adhiniyam, may declare, by notification in the official gazette, that the University is established by such name and with such jurisdiction and location of main campus,** from such date as may be mentioned in the notification. | (1) **After the receipt of the report of the committee constituted under Section 4, if the State Government is satisfied that it is advisable to establish the University it may issue a letter of intent** and ask the sponsoring body to- |
| | (i) **establish an endowment fund** in accordance with the provisions of Section 9 of this Act; |
| | (ii)**own a minimum of 30 acres** of land, if not already available; |
| (b) All such notifications issued under sub-section (1) of Section 5 of the Adhiniyam prior to coming into force of the Chhatisgarh Niji Kshetra Vishwvidyalaya (Sthapana Aur Viniyaman) Sansodhan Adhiniyam, 2004, shall be included as Schedule I of the Adhiniyam and hereafter notification issued regarding establishment of a University under the provisions of this Adhiniyam, shall form part of the said Schedule-I in chronological order. | (iii) **construct a minimum of 10,000 square meters of covered space** for administrative purposes and for conducting academic programmes, if not already available; |
| | (iv) **purchase books and journals of atleast rupees 10 lacs or as per the norms** of regulating bodies, whichever is higher, and give undertaking to invest within first three years not less than rupees 50 lacs or as per the norms of regulating bodies, whichever is higher, on books, journals, computers, library networking and other facilities so as to make the library facilities adequate for contemporary teaching and research; |
| (c) All the provisions of the Adhiniyam shall apply to Universities included in Schedule-I. | |
| (2) Every notification issued under sub-section(1) shall be laid on the table of the Legislative Assembly. | (v) **purchase equipments, computers, furniture,** other mobile and immobile assets and infrastructure facilities (other than buildings, referred to in clause (iii) above) worth rupees 20 lacs or as per the norms of regulating bodies, whichever is higher, and give undertaking to procure within the first five years equipments, computers, furniture, other mobile and immobile assets and |

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| **Sec.6: Incorporation of the University:**<br><br>(1) Every university established under sub-section (1) of Section 5 shall be a body corporate by the name notified under the said section having perpetual succession and a common seal and may sue and be sued by the said name.<br><br>(2) The University established under sub-section (1) of Section 5 may, with the prior approval of the State Government, affiliate any College or other institution or set up more than one campus.<br><br>(3) On its notification under sub-section (1) of Section 5, the University shall establish its main campus in the State of Chhatisgarh on the land referred to in sub-section (1) of Section 4 and for that purpose shall create a built up area of atleast 25,000 sq.ft. in the form of buildings and ancillary structures within a period of 2 years from the date of such notification. In the case of Universities which have already notified before this Sansodhan Adhiniyam, the period of 2 years, shall be reckoned from the date of coming in force of this Sansodhan Adhiniyam.<br><br>(4) All disputes arising as a result of the provisions made in this Adhiniyam shall be settled by a court of law located in the State of Chhatisgarh.<br><br>**Sec.24: Setting up of a Regulatory Commission:**<br><br>(1) There shall be a Regulatory Commission for the purpose of ensuring appropriate standards of teaching, examinations, research, protection of the interest of the students and ensuring reasonable service conditions of employees while the University has full freedom to function.<br><br>(2) The Regulatory Commission shall | infrastructure facilities (other than buildings, referred to in clause (iii) above) worth not less than rupees one crore or as per the norms of regulating bodies, whichever is higher;<br><br>(vi) **give undertaking to appoint at least 1 Professor, 2 Readers and adequate number of Lectures** alongwith necessary supporting staff in each department or discipline to be started by the university;<br><br>(vii) give undertaking to take up co-curricular activities like seminars, debates, quiz programmes and extracurricular activities like games, sports, National Service Scheme, National Cadet Corps etc. for the benefit of students as per the norms laid down by the regulating bodies;<br><br>(viii) give undertaking for establishment of provident fund and to take up welfare programmes for the employees of the university; and<br><br>(ix) **fulfil such other conditions and provide such other information as may be prescribed by the University Grants Commission. All India Council for Technical Education or any other statutory body established by the law of the Union or State Government.**<br><br>(2) **The sponsoring body shall fulfil the requirements and conditions specified in sub-section (1) and shall report the compliance to the State Government within a maximum period of one year from the date of issue of the letter of intent. On receiving the** |

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| function under the general control of the Visitor.<br><br>(3) The Regulatory Commission shall consist of a Chairman, two full-time and not exceeding two part time members to be appointed by the Visitor.<br><br>(4) The Chairman shall be appointed by the Visitor from a panel recommended by the State Government consisting of eminent educationists who have a thorough knowledge of the working of the institutions of higher education.<br><br>(5) The members shall be appointed by the Visitor from a panel recommended by the State Government consisting of persons of repute in the field of education, finance, law, administration/management etc.<br><br>(6) The chairman and the members shall not be connected in any way with any of the universities established under the Adhiniyam.<br><br>(7) All orders and decisions of the Regulatory Commission and all instruments issued by the Commission shall be authenticated by signature of the Chairman.<br><br>(8) Terms and conditions of services of Chairman and the members, procedure for meetings of the Commission, recruitment and service conditions of the staff of the Commission, temporary Association of persons with the Commission for particular purposes, funds of the Commission, its budget, annual report, account, audit and such other matter as may be required for proper functioning of the Commission shall be provided in the rules made by the State Government in this regard.<br><br>(9) It shall be the general duty of the Regulatory Commission:-<br><br>(a). to take, in consultation with the Universities and/or other bodies concerned with regulatory function of | **compliance report, the State Government shall appoint a committee consisting of such members, including the representatives of the regulating bodies**, as may be specified, to verify the compliance report. The committee shall submit its report to the State Government within one month from the date of its constitution specifying whether the sponsoring body has fulfilled the requirements and conditions laid down in sub-section (1).<br><br>(3) **If the sponsoring body has failed to comply with the provisions of sub-section (2), its proposal submitted under Section 4 shall stand rejected and the letter of intent issued under sub-Section (1) shall be deemed to have been withdrawn.**<br><br>Sec.6 Establishment of the university:<br><br>(1) The State Government, if it is satisfied **after considering the report submitted under sub-Section (2) of Section 5 of sub-section (1) of Section 5 may, by notification in the official gazette, establish a university with such name, location,** jurisdiction and with such conditions as may be specified in such notification and insert necessary entries in the Schedule:<br><br>**Provided that, no such notification shall be issued except on a resolution passed by the House of the State Legislature.**<br><br>(2) The university shall be deemed to have come into existence from the date of the |

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| the higher education system in the country such as the UGC, AICTE and NCTE, MCI Pharmacy Council, and such agency/agencies established by the Central Government for regulation of education, all such steps, as it considers necessary for determination and maintenance of standards of teaching, examination and research in the Universities; | notification in the Official Gazette under Sub-section (1). |
| (b) to ensure that universities have the freedom to make rules for admissions, subject to reservation policy of the Government in State of Chhattisgarh with regard to admissions of students belonging to Scheduled Tribes, Scheduled Castes and other weaker Sections of society, decide course contents, method of teaching and the evaluation of students and matters connected thereto; | Sec.7 Incorporation of the university: Every university established under sub-section (1) of Section 6 shall be a body corporate by the name notified under that section having perpetual succession and common seal and may sue and be sued by the said name. |
| (c) To ensure that universities are allowed to collect such fees and other charges which over the cost of education imparted by them and also give a reasonable surplus to enable them to maintain assets and carry out further expansion; | Sec.8 University to be self-financed: The University shall be self-financed and shall not be entitled to receive any grant or other financial assistance from the State Government. |
| (d) To ensure that the teaching staff of the University has atleast the minimum educational qualifications and get due emoluments looking to their qualifications; | Sec.9 Endowment Fund: (1) The sponsoring body shall establish an Endowment Fund for the university with an amount of ,-<br>(i) in case the university its situated-<br>(a) fifteen kilometers away from the municipal limits of the Divisional Headquarters Cities, or |
| (e) to ensure that the staff of the university is appointed by a written contract which shall be kept with the university and a copy of which shall be furnished to the employee concerned; | (b) ten kilometers away from the municipal limits of other cities,<br>one crore rupees; |
| (f) to ensure that students enrolled in the University are not cheated or exploited and unscrupulous means are not adopted to collect fees from them; | (ii) in case the university is situated in scheduled tribal area and maintains the distance specified in clause (i) from the municipal limits of a city, seventy five lacs rupees. |
| (g) To take action pertaining to the liquidation of a university. This will include completion of courses, conduct of examinations, award of degrees, etc. either by undertaking job itself or by | (iii) in other cases, two crore rupees.<br>(2) The Endowment Fund shall be used as security deposit to ensure that the university |

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| assigning the job to some other university in such a manner that the interest of the students are not adversely affected in any way. Expenditure made for these arrangements for the students alongwith the process of liquidation of the university shall be made good from the money deposited in the Endowment Fund and/or General Fund; | complies with the provisions of this Act and functions as per provisions of this Act, Statutes and Ordinances. The State Government shall have to powers to forfeit in the prescribed manner, a part or whole of the Endowment Fund in case the university or the sponsoring body contravenes the provisions of this Act or Statues, Ordinances, Regulations or Rules made thereunder. |
| (h) To regulate in consultation with the concerned University, the study centres already established in different places in India and other countries on the date of come into force of the sansodhan Adhiniyam and to permit opening of off-campus centres, off-shore campus and studh centres in consultation with the concerned University; | (3) Income from Endowment Fund may be utilised for development of infrastructure of the university but shall not be utilized to meet out the recurring expenditure of the university; |
| (10) The State Government may issue directions on matters of policy to the Regulatory Commission. | (4) The amount of Endowment Fund shall be invested and kept invested until the dissolution of the university in long terms securities issued or guaranteed by the State Government or deposited and kept deposited until the dissolution of the University in the interest bearing Personal Deposit Account in Government Treasury. |
| (11) Notwithstanding the provisions of this Adhiniyam, the State Government in the Education Department shall function as the Regulatory Commission till the Commission is constituted as per provision of this Adhiniyam or in case it has become non-functional, for whatsoever reasons. | (5)In case of investment in long term security, the certificates of the securities shall be kept in safe custody of the State Government and in case of deposit in the interest bearing Personal Deposit Account in Government Treasury, deposit shall be made with the condition that the amount shall not be withdrawn without the permission of the State Government. |

14. Before we proceed to deal with two enactments referred to above, it would be convenient to extract the observations of the Supreme Court in Yashpal's case pointing-out the deficiencies in the Chhatisgarh Act, which led to declaring the said Act ultravires of the Constitution:

> "44. As shown earlier, a university is a whole body of teachers and scholars engaged at a particular place in giving and receiving instruction in higher branches of learning; and as such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges and forming an institution for promotion of education in higher or more important branches of learning and also the colleges, building and other property belonging to such body. Other necessary attributes of a university are plurality of teachers teaching more than one higher faculties and other facilities for imparting instruction and research, provision for residence and must have certain standard of instruction providing for graduate and postgraduate levels of study. It presupposes existence of a campus, classrooms, lecture theatres, laboratories, offices, besides some playgrounds and also sports facility for overall development of personality of the students. However, under the provisions of the impugned Act, a proposal which is on paper and merely gives some kind of a plan or scheme to be done in future is notified as a university. When the Constitution has conferred power on the State to legislate on incorporation of university, any Act providing for establishment of the university must make such provisions that only an institution in the sense of university as it is generally understood with all the infrastructural facilities, where teaching and research on a wide range of subjects and of a

particular level are actually done, acquires the status of a university. **The impugned Act does not at all establish a university, yet by issuing a notification conferring the legal status of a university to a project report (which is on paper only) bestows upon it a right to confer a degree, which right it gets by virtue of Section 22 of the UGC Act. The manner in which a university is notified by issuance of a gazette notification under Section 5 and conferment of a juristic personality under Section 6 of the Act is clearly contrary to the constitutional scheme and is not contemplated by Article 246 of the Constitution**.

45. The State Legislature can make an enactment providing for incorporation of universities under Entry 32 of List II and also generally for universities under Entry 25 of List III. The subject "university" as a legislative head must be interpreted in the same manner as it is generally or commonly understood, namely with proper facilities for teaching of higher level and continuing research activity. **An enactment which simply clothes a proposal submitted by a sponsoring body or the sponsoring body itself with the juristic personality of a university so as to take advantage of Section 22 of the UGC Act and thereby acquires the right of conferring or granting academic degrees but without having any infrastructure or teaching facility for higher studies or facility for research is not contemplated by either of these entries. Sections 5 and 6 of the impugned enactment are, therefore, wholly ultra vires, being a fraud on the Constitution**.

57. In view of Regulation 3.1, a private university can only be established either by a separate Act or by one compendious Act where the legislature specifically provides for establishment of the said university. Though an attempt has been made in Section 5(1)(b) of the amended Act in this regard but the same does not conform to the Regulations inasmuch as the **initial notification notifying in the Official Gazette that the university is established, is done by an executive order and**

**not by any Act of legislature**.

59. .....We are of the opinion that having regard to the constitutional scheme and in order to ensure that the enactment made by Parliament, namely, the University Grants Commission Act is able to achieve the objective for which it has been made and UGC is able to perform its duties and responsibilities, and further that the State enactment does not come in conflict with the Central legislation and create any hindrance or obstacle in the working of the latter, **it is necessary to read the expression "established or incorporated" as "established and incorporated" insofar as the private universities are concerned**."

15. Thus, dealing with the deficiencies or objections pointed-out, at the first instance, the Preamble of the Chhatisgarh Act reads as **"establishment of self financed Private Universities"** whereas the Rajasthan Act of 2005 reads **"establishment and incorporation of private universities"**. Thus, the objection as pointed out in the Chhatisgarh Act ensuring that the State enactment does not come in conflict with the Central legislation, has been taken care of.

16. The second objection pertains to procedure whereby a University is established simply on the basis of Paper Report. The Chhatisgarh Act provided the procedure under Sections 4 and 5 read with Section 24

of the amending Chhatisgarh Act. It provides for setting up of a "Regulatory Commission" as defined in Section 2(j) for the purpose of ensuring appropriate standards of teaching, examinations, research, protection of the interest of the students and ensuring reasonable service conditions of employees. The Regulatory Commission is to be established by the Visitor (The Governor). The procedure for establishing a University under the Chhatisgarh Act can, for convenience, be divided in four stages.

**PROCESSING OF APPLICATON FOR ESTABLISHING A UNIVERSITY:**

17. To start with, at the **first stage**, Sponsoring Body desirous of establishing a private University is required to submit an application containing the Project Report to establish a University to the Regulatory Commission alongwith fee and such form as may be prescribed, atleast one year before the date from which it intends to start the University as provided under Clause (1) of sub-section (1) of Section 4 of the Act. The Sponsoring Body is also required to submit alongwith the application, the proof of having established an

Endowment Fund of Rs.2 crore and the proof of being in possession of 15 acres of land in case the main campus is proposed to be established within the Municipal Corporation Limits of Raipur; or 25 acres of land in case the main campus is proposed to be established elsewhere in the State and in addition, if the land has been obtained on lease, the period of lease should be atleast 30 years. Sub-section (2) of Section 4 provides for submission of Project Report containing the particulars enumerated under Clauses (a) to (m) thereof.

18. Comparing the first stage with the Rajasthan Act of 2005, under sub-section (1) of Section 4 of the Rajasthan Act, the Sponsoring Body intending to establish a University in private sector, is required to submit an application containing the proposal and the project report to the State Government alongwith such fee as may be prescribed. Sub-section (2) of Section 4 enumerates the particulars under Clauses (a) to (z), which a project report is required to contain.

19. At the **second stage**, under sub-section (3) of Section 4 of the Chhatisgarh Act, the Regulatory

Commission is required to hold an enquiry as to the proof of creation of Endowment Fund and of possession of land to be used exclusively for running the University or in lieu thereof proof of deposit of additional fund as per the provisions of Sub-section (1). Such an enquiry is to be made within 45 days from the date of application.

20. In the Rajasthan Act of 2005, on receipt of application alongwith the project report as provided under sub-section (3) of Section 4, the Government is required to constitute a committee consisting of such members as may be specified by it out of whom at least one shall be an expert to examine the proposal and the project report. Sub-section (4) of Section 4 provides that the Committee shall consider the proposal and the project report on the grounds namely; financial soundness and assets of the sponsoring body and its ability to set the infrastructure of the proposed university; background of the sponsoring body that is to say its expertise and experience in the field of education, its general reputation etc. and its commitment to follow the norms of the regulating bodies and further the potentiality of the courses

proposed to be offered that is to say the courses are able to develop the human resources as per the requirements of contemporary demands, the courses have new features and include emerging branches of learning. Sub-section (5) of Section 4 authorizes such committee to call for such other information from the sponsoring body as it thinks proper.

21. At the **third stage**, under the Chhatisgarh Act, under sub-section (4) of Section 4, if the Regulatory Commission is satisfied with the proposal to establish the University, it may advise the State Government to issue a notification.

22. In the Rajasthan Act of 2005 under Section 5, after the receipt of the report of the Committee constituted under Section 4, if the State Government is satisfied that it is advisable to establish the University, **it may issue a "letter of intent" and ask the sponsoring body to** -

> "(i) establish an endowment fund in accordance with the provisions of Section 9 of this Act;
>
> (ii) own a minimum of 30 acres of land, if not already available;

(iii) construct a minimum of 10,000 square meters of covered space for administrative purposes and for conducting academic programmes, if not already available;

(iv) purchase books and journals of atleast rupees 10 lacs or as per the norms of regulating bodies, whichever is higher, and give undertaking to invest within first three years not less than rupees 50 lacs or as per the norms of regulating bodies, whichever is higher, on books, journals, computers, library networking and other facilities so as to make the library facilities adequate for contemporary teaching and research;

(v) purchase equipments, computers, furniture, other mobile and immobile assets and infrastructure facilities (other than buildings, referred to in clause (iii) above) worth rupees 20 lacs or as per the norms of regulating bodies, whichever is higher, and give undertaking to procure within the first five years equipments, computers, furniture, other mobile and immobile assets and infrastructure facilities (other than buildings, referred to in clause (iii) above) worth not less than rupees one crore or as per the norms of regulating bodies, whichever is higher;

(vi) give undertaking to appoint at least 1 Professor, 2 Readers and adequate number of Lectures alongwith necessary supporting staff in each department or discipline to be started by the university;

(vii) give undertaking to take up co-curricular activities like seminars, debates, quiz programmes and extracurricular activities like games, sports, National Service Scheme, National Cadet Corps etc. for the benefit of students as per the norms laid down by the regulating bodies;

(viii) give undertaking for establishment of provident fund and to take up welfare programmes for the employees of the university; and

(ix) fulfil such other conditions and provide such

other information as may be prescribed by the University Grants Commission. All India Council for Technical Education or any other statutory body established by the law of the Union or State Government."

23. Thus, at the third stage, there is significant change, while under the Chhatisgarh Act, a **"Regulatory Commission"** on being satisfied with the project report and ancillary requirement in other words a paper report, may advise the State Government to issue notification for establishment of a University, in the Rajasthan Act of 2005, on recommendation of Committee, the State Government may issue only a "letter of intent".

24. At the **fourth stage** in the Chhatisgarh Act as provided under Section 5(1)(a), the State Government on receipt of the advice of the Regulatory Commission under sub-section (4) of Section 4 of the Act, may declare by notification in official gazette that the University is established by such name and with such jurisdiction and location of main campus from such date as may be mentioned in the notification.

25. Thus, in the Chhatisgarh Act, process is complete

at the fourth stage but under the Rajasthan Act of 2005, it proceeds to fourth, fifth, sixth and completes at seventh stage. At fourth stage, in the Rajasthan Act of 2005, as provided under sub-section (2) of Section 5, the sponsoring body is required to submit a compliance report to the State Government within a maximum period of one year from the date of issue of letter of intent as to fulfillment of requirements and conditions specified in sub-section (1). On receiving the compliance report, the State Government is required to appoint a second committee consisting of such members including the representative of the regulating bodies, as may be specified to verify the compliance report. Thus, at the fourth stage, while in the Chhatisgarh Act, on the basis of Paper Report, notification establishing a University is issued, in the Rajasthan Act of 2005 before contemplation of establishing a University, the sponsoring body is asked to demonstrate physically that it is equipped to establish a University.

26. At the **fifth stage**, the State Government is required to consider the report submitted by the **"Second Committee"** and to satisfy as to whether the sponsoring body has fulfilled the requirements and

conditions laid down. It also provides with consequential provision under sub-section (3) to the effect that if the sponsoring body has failed to comply with the provisions of sub-section (2), its proposal submitted under Section 4 shall stand rejected and the letter of intent issued under sub-section (1) shall be deemed to have been withdrawn.

27. At the **sixth stage** as provided under Section 6, the State Government on being satisfied on consideration of the report submitted under sub-section (2) of Section 5 that the sponsoring body has complied with the provisions of sub-section (1) of Section 5, shall move a resolution before the House of State Legislature to establish a University with such name, location, jurisdiction and with such conditions as may be specified in the notification. Thus, while under the Chhatisgarh Act, it is established by an executive Act, under the Rajasthan Act of 2005, it is by resolution of the Legislature.

28. At the **seventh stage**, on the resolution being adopted by the House of State Legislature, the State Govt. shall issue a notification to that effect. As

provided under Section 7, every University established under sub-section (1) of Section 6 shall be a body corporate by the name notified under that section having perpetual succession and common seal and may sue and be sued by the said name. As provided under Section 8, such a University shall be self financed and shall not be entitled to receive any grant or other financial assistance from the State Government.

29. Thus, it is evident that while under the Chhatisgarh Act, the **Regulatory Commission** on being satisfied of the project report, may advise the State Government to establish the University and on such recommendation, the State Government may issue a notification establishing a University. The Act does not provide for actual coming into existence of the essential attributes of the University i.e. existence of Campus, Classrooms, Lecture theatre, Libraries, Laboratories, office etc. Thus, the University is established simply on the basis of a proposal, which is on a Paper Report and merely give some kind of plan or scheme to be done in future notifying as a University. However, in the Rajasthan Act, on receipt of the project report, an enquiry is conducted by the Committee constituted by

the State Government. On receipt of the report of the Committee, if the State Government is prima facie satisfied, it considers to establish a University instead of straightway issuing a notification establishing a University as provided under the Chhatisgarh Act, it may issue **only a "letter of intent" asking the sponsoring University to construct a minimum** of 10,000 square meters of covered space for academic and administrative purposes, if not already available, raise a library having books and journals worth Rs.ten lacs and further to give an undertaking to invest within first three years not less than Rs.50 lacs and further to purchase equipments, computers, furnitures etc. worth Rs.20 lacs and also give an undertaking to appoint atleast 1 Professor, 2 Readers and adequate number of lecturers alongwith necessary supporting staff in each department or discipline to be started by the University. A further undertaking is required to be given to take up co-curricular activities like seminars, debates etc. and for establishing the provident fund. **All these conditions are required to be completed within the stipulated period of one year. On receiving the compliance report, a second Committee is appointed to verify that the sponsoring body has**

**fulfilled the conditions as provided under sub-section (1) of Section 5. Thus, under the Rajasthan Act, a notification is not issued simply on the basis of proposal on paper. After the first report, a "letter of intent" is issued and time is given to the sponsoring body to bring into existence the Campus, classrooms, library, office etc.** Thus, the second objection as pointed out in the Professor Yashpal's case (supra) dealing with the Chhatisgarh Act does not exist in the Rajasthan Act.

30. Reverting to the objections i.e. third objection, the Apex court held that a University can not be established by an executive order. In the Rajasthan Act as provided under sub-section (1) of Section 6, a notification establishing a private university cannot be issued except on resolution passed by the House of State Legislature. Thus, under the Rajasthan Act of 2005, a University is established by a resolution of the Legislature and not by simple Executive Notification.

31. Regarding the **last objection** as to fulfilling the conditions provided by UGC and professional bodies, its compliance has been ensured under one of the

conditions laid down in sub-section (1) of Section 5 viz; clause (ix) extracted below, at the time of issuing the "letter of intent" which reads as follows:

> "(ix) fulfil such other conditions and provide such other information as may be prescribed by the University Grants Commission. All India Council for Technical Education or any other statutory body established by the law of the Union or State Government."

32. Therefore, when a compliance report is submitted, the second Committee will ensure that sponsoring body has complied with the requirements of the UGC and the relevant professional body.

33. Thus, on compliance of conditions of issuing a letter of intent, it will be obligatory on the sponsoring body to comply with the provisions of the UGC and other statutory professional bodies and, therefore, it cannot be said that impugned Act in any way, has stultified the UGC Act or the other enactments made by the Parliament. Hence, a comparison of the two Acts clearly show that the objections pointed-out in the Chhatisgarh Act do not exist in the Rajasthan Act of 2005.

34. In Professor Yashpal's case (supra), dealing with the Chhatisgarh Act, the misuse of provisions was much apparent from the averments made in the petition to the effect that during the short span of one year, as many as 112 universities were established and many of them had absolutely no building or campus and were running from one room tenements. In the instant case, one of the sponsoring body, who is intervener in the petition, has given some details about the institution. The applicant viz; Ritnand Balved Education Foundation is the Society registered under the Societies Registration Act. The said Society is running several institutions of education/higher education throughout the Country. It is averred that the said applicant under the individual Act of State Legislature of U.P. Known as "Amity University Act, Uttarpradesh" established the University with its main campus at Gautam Budh Nagar and another campus at Lucknow. Both the campuses have more than 80 institutions imparting education in the several disciplines including Management, Engineering, Law, Communications, Biotechnology, Nanotechnology, Insurance, Education, Behavioural Science etc. to more than 20,000 students. The said sponsoring body submitted an application to the State

Government in June, 2005 containing the proposal and the project report to establish the university in the State of Rajasthan. The State Government under Section 4(3) has constituted a committee comprising of Vice Chancellor, MDS University, Ajmer, Commissioner/Director College Education, Rajasthan and Expert members as Director, Poddar Institute of Management, University of Rajasthan and the Principal, Engineering college, Bikaner. It is averred that the applicant has 152 acres of land on Delhi-Jaipur Highway under its ownership, out of which 50 acres is earmarked for the proposed University. Academic Block of 1,10,000 square feet is already constructed, besides 70,000 square feet for separate boys and girls hostels. The applicant has already invested an amount of Rs.45 crore in the said project. Learned Advocate General has also given reference to some other institutions, which we need not refer at this stage. Thus, on careful consideration of the provisions of the two Acts, we are of the view that the Rajasthan Act 2005 does not suffer from the drawbacks as pointed-out in the Chhatisgarh Act. Under the Rajasthan Act 2005, a University can not be established simply on the basis of Paper Project Report but it provides effective mechanism to ensure

that before notification establishing a University is issued, the substantial required infrastructure comes into existence physically. Thus, the principal contention of the learned counsel to the effect that Rajasthan Act 2005 is substantially similar to the Chhatisgarh Act, which has been struck down by the Supreme Court in Professor Yashpal's case, is rejected being without substance.

**COMPETENCE OF RAJASTHAN LEGISLATIVE ASSEMBLY TO ENACT THE ACT OF 2005:**

35. Dealing with the contention as to the competence of State Legislature, **it is no more res integra that the State Legislature is empowered to legislate and make an enactment for incorporation and establishment of the University in view of Entry 32 List II read with Entry 25 List III**. However, it cannot be lost sight that Entry 66 of List I deals with the institution for higher education. The coordination and determination of standards as stipulated by Entry 66 comes into operation since the University is established. Thus, for proper determination of standards in the institution for higher education or

research in the Scientific and Technical Institutions, the Parliament has constituted a commission under the name of UGC. The Commission determines and allocates funds to the University made available by the Central Government. The Commission is to act as an expert body to advise the Central Government or problems connected with the coordination or facilities and maintenance of standards in the universities. The Commission has power to recommend to any university the measures necessary for reforms and improvement in the university education and also advise the University concerned upon the action to be taken for the purpose of implementing such recommendation. In view of Section 22, only such University can confer or grant degree as established and incorporated under the Central or the State Act of the University. Similarly, there are professional bodies established under the Act of Parliament. Such bodies are responsible for maintaining the professional standards and, as such, no course can be allowed to run unless the same has been recognized by such institutions.

36. It may be stated that the UGC having noticed that setting up private universities through State Acts is a

recent phenomenon, evolved an effective regulatory mechanism for the maintenance of standards of teaching, research, examination and extension services in the private universities. The UGC has framed the regulations in the name of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003. In para 2.1 of the Regulations, "private university" has been defined. Under para 3.1, a duty is cast on the private university to conform to the relevant provisions of the UGC Act, 1956 as amended from time to time. Para 3.4 casts a duty on a private university to fulfil the minimum criteria in terms of programmes, faculty, infrastructural facilities, financial viability etc. as laid down from time to time by the UGC and other concerned statutory bodies such as the All India Council for Technical Education (AICTE), the Bar Council of India (BCI), the Distance Education Council (DEC), the Dental Council of India (DCI), the Indian Nursing Council (INC), the Medical Council of India (MCI), the National Council for Teacher Education (NCTE), the Pharmacy Council of India (PCI) etc. Para 3.5 casts a duty on such universities to provide the course of studies prescribed for a first degree and/or the post-graduate degree/diploma programmes,

formally approved by the respective academic bodies of the private university, such as Board of Studies, Academic Council and Governing/ Executive Council. Under the Regulation 4, the UGC may cause periodic inspection of the private university and its off-campus centre, study centre, off-shore campus etc. offering its programmes. The UGC has also reserved its right to call for all relevant information from the concerned private university, as provided in the UGC (Returns of Information by Universities) Rules, 1979 as amended from time to time. Para 5.1 provides the consequences of violations. It provides that if the Commission is satisfied that the private university, even after getting an opportunity to rectify the deficiency and non-conformity pointed out, has failed to comply-with, the Commission may pass an order prohibiting the private university from offering any course for the award of first degree and/or the post-graduate degree/diploma, as the case may be, till the deficiency is rectified. Para 5.2 speaks of penalty under Section 24 of the UGC Act against private university awarding a degree or diploma, not specified by the UGC. Keeping this in view, we may consider the question of competence of the Rajasthan Legislative Assembly to enact the Act of

2005.

37. The Rajasthan Legislative Assembly has enacted the Rajasthan Act of 2005 within its domain to make an enactment regarding incorporation of University as provided under Entry 32 List II read with Entry 25 List III, which provides for Education, including technical education subject to the provisions of Entries 63, 64, 65 and 66 of List I. The impugned Act provides for effective mechanism ensuring coordination and determination of standards in Institution for higher education or research and scientific education. It has been made obligatory for the private university established under the Rajasthan Act of 2005 to faithfully carry out the standards prescribed by U.G.C. and professional bodies i.e. Regulatory bodies for teaching, quality of education being imparted, curriculum, standard of examination and evaluation. Thus, there is no conflict with the Entry 66 of the Union List. **It is well settled that principle of federal supremacy laid down in Art.246(1) of the Constitution can not be resorted to unless there is an "irreconcilable" conflict between entries in the Union List and the State List.** Reference be made to

Hotel Pharmaceuticals Ltd v. State of Bihar reported in AIR 1983 SC 1019 and India Cement v. State of Tamil Nadu, AIR 1990 SC 85. Accordingly, the contention raised as to competence of Rajasthan Legislative Assembly to enact the impugned Act stands rejected.

**GLOBALIZATION OF HIGHER EDUCATION – CHALLENGES AND STRATEGIES:**

38. Mr.M.Mridul, Senior Advocate, appearing for the petitioners, has made good deal of argument, stretching the observations of the Apex Court in Professor Yashpal's case (supra) to the effect that in a case of private university, it is necessary that it should be a pre-established institution for higher education with all infrastructural facilities and qualities, which may justify its claim for being conferred the status of university. It is submitted that at the first instance, an institution should be allowed to grow as a college and if it proves its worth, it may, in due course of time, be conferred the status of deemed university and ultimately, a university. Learned counsel has referred to the instance of the prestigious institutions like Rajasthan Vidhyapeeth and Vanasthali Vidhyapeeth.

39. Having carefully gone through the judgment of the Apex Court in Yashpal's case (supra), in our humble understanding, the Apex Court has not said to the extent it has been stretched by the learned counsel. It is well known that a judgment is not to be read as a statute. The Apex Court in P.S.sathappan v. Andhra Bank Ltd. reported in (2004) 11 SCC 672 held:

> "148.(8) The judgment of this Court must be read as a whole and the ratio therefrom is require to be culled out from reading the same in its entirety and not only a part of it."

40. The proposition has been reiterated by the Apex Court recently in State of Karnataka v. C.Lalitha reported in (2006) 2 SCC 747. Infact, there is no law which prohibits establishment of a university without the same being grown as the college or any other institution. The Apex Court in Gajraj Singh v. State of U.P. reported in 2001(5) SCC 762 observed that a doubt arising from reading a judgment of the court can be resolved by assuring that the judgment was delivered consistently with the provisions of law and, therefore, a course or procedure in departure from or not in conformity with the statutory provisions, cannot be said

to have been intended or laid down by the court unless it has been so stated specifically.

41. **Taking the holistic view of the matter, if a sponsoring body realising the growing need of the Society, considers to design the new course and launches the same, it will not be possible if they are asked to first grow as a College i.e. to first get affiliated with conventional University. The affiliating college will have no independence to evolve or to design specialized courses as per the growing need of the society and launch them. This will frustrate the entire purpose for which the private universities are required to be established. It is high time that we take stock of the skewed realities with reference to globalization and our present system of education.** There are problems of massification, scarcity of resources with the existing system. It is labelled as a beleaguered system. There is need to design different new specialized courses as per the growing need of the Society. This is not possible without developing a cadre of class entrepreneurs, who can design new courses and launch them effectively. The entry of Corporate World must be

looked in right perspective. The Government of India has been supporting the education of international students through conventional universities. More than 95% of the foreign students come from developing countries of Asia and Africa like Kenya, Malaysia, Sudan, Nepal, Jordan, Ethiopia, Iran, Sri Lanka, Mauritius, Tanzania, Thailand and Yemen. It is reported that there is steady decline in the inflow of foreign students in India since 1993. Even students from Africa, Middle East, South Africa and other developing nations have been shifting away from India. In the field of economic development, India today is very near to developed nations. Many other developing countries are far behind us and still staggering for economic development. They naturally look to India for assistance and advice. Many foreign students, therefore, come to India for higher education incurring all the cost and inconvenience. The Indian scenario from the point of view of Higher Education, the U.S.A., U.K., Australia and Canada are the main providers of higher education to Indians. India is fourth largest market for the U.S.A.'s foreign education. Out of 5,14,000 foreign students currently studying in the United States, 42000 students are from India.

42. There are numerous problems confronting the Indian Higher Education System. It comprises of some 300 universities and deemed universities, more than 10,000 colleges and some 6.5 million students. The situation is further complicated by rigidity of India's higher education bureaucracy, the political pressure on higher education from regional, religious and caste based groups and growing problem of corruption in various aspects of life i.e. admission, examination, recruitment etc. Thus, the Indian Universities are far too behind from their counterparts in developing countries. They still operate as if they are factories to turn out stereotyped degrees, which are hardly tested for their practical worth and social relevance, whereas good universities in the countries like U.S.A., German and U.K. are primarily research oriented, higher education is just a by-product. In U.S.A., out of 2364 Universities, 1752 are private. In Japan, out of 684 Universities, 512 are private. In U.K., there are 104 universities and 231 are autonomous institutions.

43. The eleven judge bench of the Apex Court in T.M.A. Pai Foundation's case (supra) has emphasized on the autonomy in the education through private unaided

educational institutions. The Court observed that the private education is one of the most dynamic and fastest growing segments of post-secondary education at the turn of 21st Century. It will be relevant to extract para 49 of the judgment as follows:

> "49. Not only has demand overwhelmed the ability of the Governments to provide education, there has also been a significant change in the way that higher education is perceived. **The idea of an academic degree as a "private good' that benefits the individual rather than a "public good" for society is now widely accepted**. The logic of today's economics and an ideology of privatization have contributed to the resurgence of private higher education and the establishing of private institutions where none or very few existed before."

44. The residential Universities like I.I.Ts., I.I.Ms. and autonomous colleges are suitable for exporting higher education but such institutions are limited in our Country. **There are real opportunities for India to benefit significantly from the global revolution in higher education. To do so will require major policy reforms in the way Indian universities are structured, funded and regulated. It will require closer links between Indian industry, especially the growing technology based sector and Indian**

**Universities. It will require a new globally oriented, entrepreneurial style of leadership by Indian Vice Chancellors and other top level administrators**. Thus, there is not only an emphasis on a Statute for establishing a private University but also to extend all sort of help to set up residential non-affiliated private universities and autonomous bodies. There is the need for reliable and globally acceptable accreditation System so that the Indian degrees are recognized worldwide. Academic reforms like introduction of relevant, flexible, modular and modernized courses according to the needs, introduction of accredited system, use of inter-net and modern teaching as an overhauling examination system, continuous assessment is the need of the hour.

**ROLE OF U.G.C. AND REGULATORY BODIES – COORDINATION AND DETERMINATION OF STANDARDS:**

45. However, we maintain that the guarantee of the high educational standards cannot be provided without the presence of Regulatory Bodies. The label "UGC/AICTE Approved" should become a brand name

signifying high educational quality and providing international viability to such projects undertaken by even the private universities. The UGC and AICTE should provide international benchmarking for member institutions relating to the quality, funding levels, fee structures, research outcomes, student support services, infrastructure provision, management efficacy, accreditation and other important matters. These bodies should also become a platform for providing means for development of joint programmes for education among universities within the country and abroad. They should conduct surveys and provide a suitable system to bridge the gap between the manpower creation and employment generation in the host countries.

**CRITICISM AS TO OTHER PROVISIONS OF RAJASTHAN ACT OF 2005:**

46. It is next contended that at all stages envisaged by the impugned Act except for a few exceptions, the University is more or less an administrative endeavour of the sponsoring body and will be in the hands of a society registered under the Societies Registration Act,

a Trust or a Company which may have nothing by way of expertise in education. Referring the provisions of sub-section (u) of Section 2, it is submitted that selection of the Chancellor is completely in the hands of the sponsoring body. The Vice Chancellor is to be appointed as provided under section 15 of the Act by the Chancellor from among the three persons recommended by the Governing Body. The Governing Body which is not defined in Section 2 of the Act but is referred-to in Section 20 of the act, is nothing but a creature of the sponsoring body. Again, the Registrar is to be appointed by the Chairperson of the Sponsoring Body. Section 19 pertains to the authorities of the University i.e. the Governing Body; the Board of Management and the Academic Council. All the bodies are represented by the persons appointed by the Sponsoring Body. The Sponsoring Body, broadly speaking, is more or less a commercial body having no knowledge or experience in the field of education. Thus, the top officials of the University i.e. Chancellor, Vice Chancellor and the Registrar will be just portage of the Sponsoring Body.

47. Having gone through all the relevant provisions,

we are of the view that the contention raised is of no substance. The role of the Sponsoring Body literally comes to an end, the moment the concerned institution is accorded the status of a University. On establishing the university, it is governed by the provisions of the Act. The authority of the Sponsoring Body to appoint Chancellor is always subject to large wisdom of the Visitor, who is none else but the Head of the State. There are sufficient safeguards provided in the matter of appointment of the Chancellor of the University. Similarly, the Vice Chancellor is to be appointed by the Chancellor from the panel of three persons recommended by the General Council. The General Council consists of eminent educationists nominated by the Sponsoring Body, one expert of Management or Information Technology from outside the University nominated by the Chancellor and one expert of Finance nominated by the Chancellor. Similarly, only the person having good administrative experience is to be appointed as Registrar by the Sponsoring Body. Even otherwise, we have no reason to believe that the Sponsoring Body will act against objects of the University for which it has been established. Infact, the Sponsoring Body has definitely a major role to play in

running a private university. To cater the present needs of the globalization and trend in the education, new institutions of higher education should come up which are being established by the Corporate Organizations and entrepreneurs. Naturally, their experience and wisdom will be useful in establishing and running a University. Infact, there has been a suggestion that much enlightened business houses should be involved in the trade of education by giving suitable incentives in setting up an export oriented international standard of higher education institution. We are not expressing any opinion on the issue. Suffice it to say that that the attributes made by the petitioners against the Sponsoring Body are without any foundation. It is further submitted that Section 5 (1)(ii) of the Act of 2005 provides that the Sponsoring Body should own a minimum of 30 acres of land. Referring to Section 43 of the Act of 2005, it is submitted that on establishment of the University, all the assets and liabilities of the University shall vest in the Sponsoring Body. It is submitted that the possibility cannot be ruled out that the Sponsoring Body may dissolve the University after giving a notice of one year to the State. Petitioners have referred to the provisions of the Rajasthan U.I.T.

(Disposal of Urban Land) Rules, 1974. Rule 18 provides for allotment of land to public and charitable institutions and also provides that lands for schools and other public and charitable institutions may be allotted on payment of 50% of the sanctioned reserve price. Similarly Rule 18 of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 provides for allotment of land to public and charitable institutions and provides that lands for schools and other public and charitable institutions may be allotted on payment of 50% of the sanctioned reserve price, except for categories covered under Rule 17 of the Rules. It is submitted that in view of the matter, the Sponsoring Body will find it very easy to have the lands allotted to them at a throw away price and if the University ultimately fails, all the assets including land will vest in the Sponsoring Body. The result will be that the Sponsoring Body will have title over the land. This way, the Sponsoring Body will grab the entire land at the sanctioned reserve price. The contention raised is hypothetical. The University shall be established only after a great scrutiny and there is no reason to apprehend misuse of the provisions by way of dissolution of the University.

**SAFEGUARDS:**

48. Certain provisions of the Act of 2005 have been brought to our notice which provides sufficient safeguards to prevent abuse of the Act. According to Section 8 of the Act of 2005, the University shall be self financed body, still the University is bound under Section 34 of the Act of 2005 to get the fee structure approved by the Committee constituted by the State Government for the purpose. Not only this, the University is obliged to give concessions or rebates in fee or freeship and scholarship to the students economically poor and socially backward family including SC/ST and other backward classes and handicapped. As provided under Section 33, the admissions are to be made strictly on the basis of merit. Not only this, the reservation policy of the State Government, so far as the admission is concerned, is to be followed. As per Section 13, His Excellency the Governor of State of Rajasthan is the Visitor. He has been vested with the wide power to call for any paper or information relating to affairs of the University and also power to issue directions, as he may deem fit in the interest of the University. In case, the Visitor is

satisfied that any order, proceeding or decision taken by the authority of the University is not in conformity with the provisions of the Act or Statutes, Ordinances, Regulations and Rules, he may issue necessary directions, which are to be complied with by the University. Sections 28, 29, 30 and 31 specifically provide that the First Statutes, the Subsequent Statutes, the First Ordinances and the Subsequent Ordinances, before coming into force, shall be approved by the State Government.

**CONCLUSION:**

49. Thus, on overall reading of relevant provisions, we are of the view that there is nothing on the basis of which it can be said that the establishment of the Universities may be abused for the interest of the Sponsoring body. Thus, the apprehension of the petitioners is baseless. On consideration of the entire matter, the petitioners have miserably failed to make out any ground for declaring the impugned Act as ultravires of the Constitution.

**CLARIFICATION:**

50. **The State authorities involved in processing the application to establish Private University under the Rajasthan Act of 2005, should proceed cautiously keeping in mind that permission is granted only in rare & exceptional cases and not in a routine manner. The Act will be utilized only to introduce modular and modernized Courses as per the need, equipped with modern teaching and Examination System and not for conventional Universities. Parties interested in establishing Self-financed Institutions on conventional line, should only be allowed to grow as Colleges. The notification establishing a University including a complaint of not proceeding as per the phased programme, shall be subject to judicial review by this Court under Article 226 of the Constitution of India as per the established parameters in the event of challenge. We also make it clear that in the event, the impugned Act is misused and proceeds the Chhatisgarh way, challenge to the impugned Act will be available on the said ground in accordance with law.**

51. Consequently, the writ petition being devoid of merit stands dismissed. Cost easy.

**(GOPAL KRISHAN VYAS), J.** **(N.N.MATHUR), J.**

RANKAWAT JK, PS